IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 834 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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MAHEBUBKHAN NARSING RANA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 834 of 1994
MR SP DAVE for Petitioner No. 1
MR HL JANI, APP, for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 29/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.C.PATEL)

1. The appellant-Maheboobkhan Narsing Rana and his

mother Kesarba were accused in Sessions Case No.62 of 1993 before the Additional Sessions Judge, Nadiad, who, by his judgment and order dated the 2nd July, 1994, convicted him of the offences punishable under Sections 302, 201 and 498-A of the Indian Penal code. He sentenced the appellant to a life term and a fine of Rs.2000, in default, rigorous imprisonment for six months, for the offence under Section 302; rigorous imprisonment for three years and a fine of Rs.1000/-, in default, rigorous imprisonment for three months, for offence under Section 201; and rigorous imprisonment for three years and a fine of Rs.1000/-, in default, rigorous imprisonment for months, for the offence under Section 498-A. He acquitted Kesarba of the offences under sections 302 and 201 giving benefit of the doubt to her. She had not been charged with the offence under Section 498-A.

2. The charge against the appellant and his mother was that they throttled Hamidaben, the wife of the appellant to death and then tried to cause the evidence to disappear by pouring kerosene on her and setting her on fire. It was also alleged against the appellant that he had demanded from the deceased-Hamidaben her ornaments since he wanted to purchase land by selling them and since she was refusing to part with her ornaments, he used to beat her and physically and mentally torture her.

3. The prosecution case is to be found in the evidence of Ibrahim Bharatsinh (P.W.4), who was a brother of deceased-Hamida. His evidence shows that he lives with his parents and three brothers in village Napa Vanta, taluka Borsad, district Kheda. They are farmers. The eldest brother-Udesinh lives with his maternal uncle in village Napad. The second brother is Bapusaheb. He is the third brother and Mayuddin is the youngest brother. All brothers are married and they live together. They had one sister, namely, Hamida. She was aged about 20 years at the time of the incident.

4. Hamida was married to the appellant Maheboobkhan about one year before the date of the incident. The appellant was living in the same village. After her marriage, she was residing with her husband and she used to come to their place on occasions. Kesarba was her mother-in-law and she was living with Hamidaben.

5. The incident occurred on 30.7.1992. At that time, the witness-Ibrahim was in the field with his father and his brothers Mayuddin and Bapusaheb. At about

8.30, his uncle's son-Gemalsinh Sahebsinh came there and told them that their sister-Hamida had been burnt. They went back home and then went to the house of Hamida. She was lying dead in the room inside the house. Blood was oozing from her nose and the tongue had protruded. Her hair was also burnt. Her body below the neck was also burnt. A primus (stove) was lying at the side of her dead body.

6. According to Ibrahim, about one month before the date of the incident, there had been quarrels between the accused and Hamida about the ornaments. The accused wanted to purchase land by selling her ornaments. Hamida refused to give her ornaments and, hence, both the accused used to beat her. Even one week before the date of incident, they had beaten Hamida and driven her out. But they sent her back.

7. Ibrahim stated in his evidence that, when they reached Hamida's house, appellant-Maheboob was present there. He lodged a complaint with the Borsad Police Station.

8. In cross-examination, he said that Kesarba was the daughter of his father's maternal uncle and they had married Hamida to Maheboob because of this relationship. However, he denied the suggestion that there was no custom of giving ornaments in their caste in a marriage between members of the same family. He also denied the suggestion that, in such cases, there was no custom of giving dowry. He said that there was a writing to show that ornaments had been given to Hamida on the occasion of marriage.

9. Then he said that, after the marriage, Hamida stayed with her husband for hardly six days and then she was brought back. She stayed with them for 8 to 10 days and she was sent back to her husband's place. At that time, she stayed with her husband for about one month. He admitted that about one month after the marriage, the appellant went to Surat since he got a job there. However, he denied that the appellant lived continuously for 9 to 10 months in Surat and that, though the appellant was pressing them to send Hamida to Surat, they were refusing to do so.

10. It was elicited in his cross-examination that the accused were cultivating the land of the Mosque as tenants. But they wanted to purchase the land at a price to be fixed by the Panch. He admitted that the accused would be deemed purchasers under the Tenancy Act, but

since the land belonged to the Mosque, they wanted to purchase the land at the price fixed by the Panch.

11. It was put to him in cross-examination that on 29.7.1992, Kesarba's cousin Bachubhai Bharatsinh, who was living in village Napad, was released on bail in a criminal case and before that, Bachubhai had been admitted to Hospital and Kesarba was looking after him in the hospital at Anand. However, he denied the suggestion and asserted that the appellant was in village Napa-Vanta. He denied that, on the date of the incident, neither of the accused was present in the house. He denied that he had filed a false complaint in order to extract money from the appellant.

12. It appears from the evidence of Nizamodin Saiyad (P.W.8), who was the Investigating Officer, that on receiving the message from the P.S.O., Borsad Police Station that Hamidaben had received burns at village Napa, he went there at about 9.30 on 30.7.1992 and, at that time, Ibrahimbhai gave his complaint which he took down. Thereafter, he had drawn the Inquest Panchnama. Thereafter, the Panchnama was also made of the scene of offence. He sent a Yadi at about 3.45 P.M. to the Medical Officer, Muncipal Hospital, Borsad, requesting for a postmortem of the dead body.

13. The postmortem was carried out by Dr. Kalpanaben Vrujlal and Dr. Dinesh Suthar. They started postmortem at about 4 P.M. and completed the same at 6 P.M. on 30.7.1992. They found the following external injuries :-

(1) Linear bruise mark of about 4 cm. x 0.5 cm. size in transverse direction over upper part of neck, on left side just below the angle of mandible.

(2) Superficial linear bruising of about 0.5 cm. width beginning just below the medial end of injury No.1, running in transverse direction, parallel to injury No.1, extending over lateral aspect of left side of neck and ending posteriorly justi lateral to upper cervical spine.

(3) Superficial abrasion of about 3 x 2 cm. size of lateral aspect of left elbow joint.

(4) Superficial burns with blackening of skin at places (due to carbon deposition) involving following areas :-

(i) Burns over right side of neck, right supraclavicular region, right shoulder and right scapular region.

(ii) Burns over right breast and medial aspect of left breast.

(iii) Burns over epigastric region.

(iv) Burns over ant. lower abdomen and genitals.

(v) Posteriorly over both gluteal and lateral aspect of lumber region.

(vi) Medial aspect of both thighs.

(vii) Right leg: whole leg and heel.

(viii) Left leg: upper part of leg just below knee. Blistering is totally absent."

She said that injuries No.1, 2 and 3 were antemortem while the burns injuries described at Sr. No.4 were postmortem.

14. On internal examination, they made the following observations:-

(1) Meninges and Brain matter: Congested.

(2) Subcutaneous tissues & muscles of upper part of neck are congested.

(3) Oedematous and haemorrhages present.

(4) Upper part of larynx: congested, blood and froth are seen.

(5) Trechea: Blood and froth are seen.

(6) Left an right chests were Congested, collapsed and petechial haemorrhages present.

(7) Neck veins are congested.

(8) Mouth: closed, teeth intact, tightly clenched.

(9) Mild congestion in Liver.

(10) Uterus: 20 weeks size male foetus is seen inside the cavity.

14.1 According to her the cause of death was acute cardiorespiratory failure due to asphyxia resulted from throttling. She said that there were linear bruise marks on Hamida's neck and they must have been caused by throttling her with a string or a twisted cloth. She said that because of throttling, blood and froth were oozing from the nose and the mouth. Internal injuries No.2 to 5 corresponded to external injuries No.1 and 2. She said that internal injuries No.6 and 7 were because of throttling.

14.2 In her cross-examonation, some hypothetical questions were put, but nothing substantial could be brought out. It was her opinion that death was due to strangulation.

15. In view of this evidence, there cannot be any dispute that Hamidaben had died because of asphyxia resulting from strangulation and an attempt was made to pass off the incident as a case of suicide by pouring kerosene on her and setting her on fire.

16. The question is whether the appellant was the author of the crime. We, therefore, turn to evidence of other witnesses, who were examined on behalf of the prosecuction.

17. Bharatsinh Fatesinh (P.W.1) is the father of Hamidaben. He stated that the appellant had demanded ornaments from Hamida for purchasing the land. Since Hamida had refused to give her ornaments, she had been beaten by the appellant. This happened about one month before the date of the incident and Hamida had complained to him about it. He also stated that Hamida complained of beating by her husband and mother-in-law over ornaments about one week before the date of the incident. At the time of the incident, he was in his field with Bapusaheb and Ibrahim and being informed by his nephew-Gemalsinh that Hamida had received burns, they had gone there. He stated in his evidence that Kesarba had left by bus in the early morning. He admitted in cross-examination that the appellant lived for 9 to 10 months in Surat and that they had refused to send Hamida to Surat. However, he denied that that was the only dispute. He denied that the appellant had returned from Surat to Napa only 10 days before the incident.

18. The prosecution has also examined Bismillaben Ibrahimbhai (P.W.3), wife of Ibrahimbhai, to show that the accused had demanded ornaments from Hamidaben for

purchasing the land and that they had beaten Hamidaben. Allarkhan Narsinh Rana (P.W.2) was the friend of Mayudin, brother of Hamidaben. He had gone to the place of incident on being informed by Mayudin to that effect. He had gone to village Napad to fetch Mayudin's brother Udesinh and his wife Madina and also Bismillaben.

19. Learned advocate for the appellant contended that the evidence of demand of ornaments and the beating because of alleged refusal to part with the ornaments is shaky and cannot be believed. However, the evidence of Bharatsinh Fatesinh, father of Hamida, Ibrahim, the brother of Hamida, Bismillaben Ibrahim, wife of Ibrahim, is consistent and there is no reason to disbelieve the same. Nothing substantial has been brought out in their cross-examination. We are, therefore, satisfied that the appellant had demanded ornaments from Hamidaben and had beaten her when she refused to give the ornaments.

20. As stated earlier, in view of the medical evidence, it cannot be disputed that Hamidaben died because of strangulation. But the question is whether it was the appellant who had caused her death. It is true that there is no direct eye-witness of the incident. However, at the same time, the evidence shows that the appellant and his wife Hamidaben were living together in the same house in the village. Even in cross-examination of Bharatsinh, all that was suggested was that Mehboobkhan had returned from Surat to village Napa only 10 days before the incident. It was also put to the witnesses in cross-examination that, Kesarba-mother of the appellant, who was accused No.2, was looking after Bachubhai Bharatsinh, who had been admitted in the hospital at Anand and she was not present at the time of the incident and the learned Sessions Judge gave benefit of the doubt to Kesarba. However, beyond suggesting that the appellant was not present when the incident occurred, nothing is on record to show as to where he was and why he was not at home. In his further statement, the appellant said that he too had gone to village Napad since Bachubhai and his sons had been released on bail and he had stayed the night there since there was a storm. However, there is nothing on the record to show that he was at village Napad. When a husband and wife are living together in a small village, the presumption would be that they would be in their house together at night unless it is shown that the husband was away somewhere else.

21. According to Dr. Kalpanaben, the death must have occurred six to eight hours before the dead body was

brought to her at 3.45 P.M., which means that Hamida was killed early in the morning. Ibrahim has stated that the appellant was in the house when they went there. The learned Advocate for the appellant vehemently submitted that Ibrahim had not stated in his complaint that the appellant was at the house and no other witness has said that he was at the house. However, this omission was not put to Ibrahim in his cross-examination and he was not given any opportunity to explain the same. In the circumstances, we see no reason to disbelieve Ibrahim on this point and, as stated earlier, in a small village, the husband would necessarily be at home in the early morning with his wife. Once we believe that the husband was present when the incident occurred, the only inference that can be drawn is that he had committed the offence in question. He not only throttled his wife to death, but tried to make it appear that it was a case of suicide by pouring kerosene on her and and setting her on fire and placing a primus (stove) beside her. The learned Judge has, therefore, rightly convicted him of the offences punishable under Sections 302, 201 and 498-A of Indian Penal Code. We, therefore, confirm the conviction for the said offences and also the sentences awarded to him. The appeal, therefore, fails and is dismissed.

[M.C. PATEL, J.]

[A. L. DAVE, J.]

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